

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JANE DOE 1, et al.,  
Plaintiffs,

v.

KEVIN K. MCALEENAN, et al.,  
Defendants.

Case No. [18-cv-02349-BLF](#) (VKD)

**ORDER DISCHARGING ORDER TO  
SHOW CAUSE RE SANCTIONS FOR  
NON-COMPLIANCE WITH COURT  
ORDER**

Re: Dkt. No. 235

On September 23, 2019, the Court issued an order directing defendants to show cause why the Court should not impose sanctions for defendants' failure to comply with the Court's September 6, 2019 order regarding defendants' assertion of the law enforcement and deliberative process privileges (Dkt. 223). Dkt. No. 235. As ordered, defendants filed a response the order to show cause on September 27, 2019, and the Court held a hearing on the matter on October 1, 2019. Dkt. Nos. 239, 242. Defendants represent that they have now produced the documents that are the subject of the Court's September 6 order. Dkt. No. 236.

This Court has authority under Federal Rule of Civil Procedure 37(b) and inherent authority to issue sanctions for failure to comply with a discovery order. Fed. R. Civ. P. 37(b)(2); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45 (1991). Here, defendants provide no substantial justification for their failure to comply with the Court's September 6 order. Defendants previously represented to the Court that the documents submitted for review in connection with the privilege dispute were not classified. Defendants' explanation for why that earlier representation was not accurate and why the documents would not be produced as ordered does little to persuade the Court that the failure to comply was justified or in good faith.

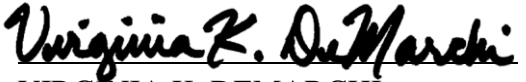
The Court has carefully considered whether sanctions are warranted here. On the one

1 hand, defendants' failure to comply with the September 6 order comes after repeated and  
2 unreasonable delays by defendants in providing the jurisdictional discovery the Court first ordered  
3 over a year ago. Dkt. No. 102. Defendants did not move for relief from the deadlines set in the  
4 September 6 order or for review on the merits; they simply chose not to comply and so advised the  
5 Court. They have no good explanation for that course of conduct. On the other hand, plaintiffs  
6 were not materially prejudiced by defendants' failure to comply with the September 6 order, as  
7 defendants promptly produced the disputed documents following the Court's further order.

8 In these circumstances, and in the exercise of its discretion, the Court will not sanction  
9 defendants for their failure to comply with the September 6 order. Defendants are cautioned that  
10 the Court will not tolerate deliberate non-compliance with discovery orders in the future.

11 **IT IS SO ORDERED.**

12 Dated: October 4, 2019

13  
14   
15 VIRGINIA K. DEMARCHI  
16 United States Magistrate Judge  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28